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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,306	11/18/2003	Chia Yung Cheng	2003B123	6939

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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/716,306	Applicant(s) CHENG ET AL.	
	Examiner Norca L. Torres-Velazquez	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-115 is/are pending in the application.
- 4a) Of the above claim(s) 72-88 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-71 and 89-115 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>72804 51305 81005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 72-88 and 116-117 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/10/05.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-71 and 89-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over TIMMONS et al. (EP 0462574 B2) in view of DATTA et al. (EP 1223191 A1).

TIMMONS et al. teaches nonwoven fabric laminates useful for applications such as towels, industrial garments, medical garments, among others. [0002] The reference teaches the use of a polypropylene resin in the form of a reactor granule having a starting molecular weight distribution of 4.0 to 4.5 Mw/Mn and a melt flow rate of from 1000 to 3000 gms/10 min. [0010] The reference teaches spunbonding and meltblowing in the production of the filaments and the construction of laminates. (Refer to [0017]-[0021])

TIMMONS et al. fails to teach a composition that includes the first and second components of the present invention.

DATTA et al. discloses thermoplastic polymer blend compositions comprising from about 35% to about 85% isotactic polypropylene and from about 30% to about 70% of an

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ethylene and propylene copolymer. The reference teaches increased tensile strength from the blends. (Abstract)

The reference teaches that the first polymer component, i.e. the polypropylene polymer component may be homopolypropylene, or copolymers of propylene, or some blends thereof. The first polymer component of the present invention is predominately crystalline, i.e., it has a melting point generally greater than about 110 °C. [0017] The second polymer component of the polymer blend compositions comprises a copolymer of propylene and another alpha-olefin having less than 6 carbon atoms, preferably ethylene. The second polymer component comprises a random copolymer having a narrow compositional distribution. [0021] The copolymer second component has a melting point between about 105°C and 25°C. [0023] The second polymer component preferably has a narrow molecular weight distribution (MWD) between about 1.8 to about 5.0. [0024] Table 1, shows heat of fusion for the second polymer component that range from 7.8 to 71.9 J/g. (Refer to page 10) The reference further teaches compositions with about 4 wt% to about 25 wt% ethylene in the second polymer component. [0009] The reference also teaches polymerization methods that include Ziegler-Natta catalyst and metallocene catalyst system. [00020]

It is the Examiner's interpretation that the first polymer component of DATTA et al. equates to the second component of the present invention and the second polymer component of the reference equates to the first component of the present invention.

Since both references are directed to materials from propylene based resins with narrow molecular weight distribution, the purpose disclosed by DATTA et al. would have been recognized in the pertinent art of TIMMONS.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify resin composition of TIMMONS and provide it with the blend composition of DATTA et al. with the motivation of producing a material with increased tensile strength and improved process characteristics as disclosed by DATTA et al. (Abstract)

Although the TIMMONS and DATTA et al. references do not explicitly teach the claimed permanent set and elongation it is reasonable to presume that this property is inherent to the nonwoven fabric from the combination of TIMMONS and DATTA et al. Support for said presumption is found in the use of like materials (i.e. similar composition, nonwoven made by similar processes). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of permanent set and elongation would obviously have been present one the product from the combination of TIMMONS and DATTA is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

4. Claims 113-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over TIMMONS and DATTA et al. as applied to claim 1 above, and further in view of ARATAKE et al. (US 5,910,362).

TIMMONS and DATTA et al. are silent to staple fibers.

ARATAKE et al. relates to a polyolefin fiber and a nonwoven fabric produced by using the fiber. It teaches using such fabric in applications such as operating gowns, medical supplies such as paper diapers and sanitary napkins, among others. (Col. 1, lines 5-20) The reference

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teaches melt spinning propylene homopolymer polymerized by using a Ziegler-Natta catalyst, teaches crimping the filaments and cutting them into staple fibers at a length of 38 mm. (Refer to Col. 6, lines 31-40)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use staple fibers in the production of the nonwoven fabric motivated by the desire of producing fabrics having a high strength and excellent hand feeling as taught by ARATAKE et al. (Abstract)

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-71 and 89-115 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/969,489. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims claim a nonwoven fabric made from a blend or composition comprising the same components.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

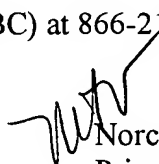
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7. Claims 1-71 and 89-115 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,342,565. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '565 patent claims a nonwoven made from a blend with similar components to those claimed in the present invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

September 15, 2005